



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 27, 2018

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: **United States v. David Bergstein, 16 Cr. 746 (PKC)**

Dear Judge Castel:

The Government respectfully writes to request the following modification and addition to the charge:

1. Counts Four and Five – Elements (Draft Charge, P. 60): Replace the phrase “stock, or shares in a company” in the first element with the word “Security”;¹ and
2. Add the following: “The term ‘security’ is defined in the statute that makes securities fraud a crime. Congress defined the term ‘security’ broadly because its purpose was to regulate investments, in whatever form they are made and by whatever name they are called. The definition of the term security includes “any note, stock, treasury stock, security future, security-based swap, bond, debenture certificate of interest . . . investment contract . . . or in general, any instrument commonly known as a ‘security.’”² See *U.S. v. Robert McDonald*, 11 Cr. 19 (JGK) (dkt# 55).

Respectfully submitted,

GEOFFREY S. BERMAN
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By: /s/
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¹ 15 U.S.C. § 78j(b).

² 15 U.S.C. § 78c(10).